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FILED
AUG 16 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 258

ROBERT M. ALEXANDER, *Petitioner*,

v.

COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

and

COUNTY SCHOOL BOARD OF ARLINGTON COUNTY, VIRGINIA

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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JURISDICTION

Respondents submit that this Court does not have jurisdiction because (1) no constitutional right personal to the Petitioner is alleged to have been violated and (2) no substantial Federal question is involved because (a) it is apparent from the record that negro

children in Arlington County are not the victims of deliberate segregation in public schools; and (b) the improvement of public schools and the use of public funds therefor is not an unconstitutional objective.

QUESTION PRESENTED

The real question presented is this:

Should this Court take jurisdiction to review a State Court judgment validating a bond issue of $950,000.00 for school purposes voted at a duly called election and upholding a school board decision relating to the location, size and financing of a school building as not being arbitrary, unreasonable, capricious, and discriminatory, solely because one individual parent and taxpayer alleged, but did not prove in the Trial Court that the "unexpressed purpose" of the school board was to continue to discriminate against negro children and without even an allegation that any 14th Amendment rights of such individual plaintiff were violated?

STATEMENT OF THE CASE AND THE FACTS

In order to meet the needs of the increasing school population in Arlington County, the County School Board has, in the past years, constructed many new schools (40)* and substantially enlarged a number of existing schools. (114) The School Board determined that there was need for additional classrooms in the Drew-Kemper area (a school district, the schools of which are at present attended primarily by negro children). The School Board further determined that in order to finance the needed classrooms in said area, that it would be necessary that a bond issue for such pur-

* Figures in parenthesis refer to pages of the typewritten transcript of proceedings.

poses be submitted to the electorate. (The Constitution of Virginia, § 115a requires any such debt to be submitted to the approval of the majority of the voters in the County). Accordingly, the School Board, pursuant to the Virginia statute for such cases made and provided (§ 15-666.29 of the Code of Virginia, 1950, as amended) by resolution, requested the County Board of Arlington County (the governing body of the County) to adopt a resolution calling for an election on the question. The County Board did so and the electorate approved the contracting of a debt, borrowing money and issuing bonds of Arlington County in the amount of $950,000.00 for the purpose of providing funds for the construction and acquisition of school improvements in the County. A brochure informing the people that the $950,000.00 school bonds were to be used for the enlargement of the schools in the Drew-Kemper area and requesting the approval by the voters of the County, was mailed to most of the registered voters in the County under the auspices of the County Board and the County School Board (88, Ex. E). After the approval by the electorate of the bond issue for the said purposes, the petitioner filed a motion for judgment with the Circuit Court of Arlington County, Virginia, asking the Court to declare the illegality of the issuance of any bonds pursuant to the said election. The School Board intervened and asked validation of the bond issue. Of the several issues raised in the said motion for judgment, only one remains at this time, to-wit: the contention that the "unexpressed purpose" of the County School Board in adopting its resolution (asking the County Board to call an election) is to continue to discriminate against negro school children contrary to the equal protection and due process clauses of the 14th Amendment to the Constitution of

the United States. The Trial Court ruled that the plaintiff had not sustained the burden of proof in the case and accordingly dismissed the same.

In addition to the above, the testimony developed the following specific facts regarding the Drew-Kemper situation:

To meet the need for additional classrooms in the Drew-Kemper area, more time was spent by the Board members and staff in trying to determine what was the best educational plan than in any other part of the tremendous buiding program. (40) All sites suggested were investigated and only three were suggested in addition to the area around Drew-Kemper. (41) These other three were found not suitable by the Board. One Board member preferred the Douglas Park site, but admitted that the other members acted in good faith and that race played no part in the decision (144, 145). The absence of an optimum new school site within the area of overcrowding, required consideration of enlarging Drew school. While the proposed addition would make it the largest elementary school in the County (as one must be), the School Board first ascertained that it would not be unique in size or capacity. Mr. Ray Reid, Superintendent, testified that in the metropolitan area of Washington there were twenty schools having an equal or greater capacity than the proposed Drew-Kemper addition. The same was true of thirty-six elementary schools in fourteen different school divisions in Virginia. (88, Ex. K) It is true that the State standard for site size was not met and a waiver was required. But of the thirty-three elementary schools in Arlington, twenty-four had less than the State standard site size. (86-87, Ex. J) The matter was under study from October, 1959 until Sep-

tember, 1961, and there were a series of public hearings, studies, engineering surveys, architectural studies and many school board discussions. (90, Ex. L) The attitude of parents of the children in the Drew-Kemper area was sought and its Parent Teacher Association voted 89 to 18 in favor of the plan which the Board subsequently adopted. (91, 92)

Ray E. Reid, the Division Superintendent for Arlington County, with over thirty-five years of experience in all phases of education in Virginia, (154, 155) testified that there was a need for an adequate facility in the Drew-Kemper area "so that these children be housed where they live," and would not have to be distributed in several different sites (156); that an elementary school of the size proposed was educationally and administratively sound; and that he recommended the proposal which was adopted by the School Board. (89, 157)

Other facts are: the entire Arlington County School system is desegregated (76); the petitioner has not made application to transfer his child out of the Drew-Kemper district; and, (as brought out by the Judge of the trial court) not a single application for transfer of a child out of his district was pending before school officials or before the Federal Court (76, 77) As said before, at the conclusion of the evidence and argument of counsel, the Court held that no evidence had been produced to support any charge made by the Petitioner.

ARGUMENT**

I

The Petitioner Does Not Present a Case for Review By This Court Under 28 USCA § 1257(3)

This section requires that a ". . . title, right, privilege or immunity is specially set up or claimed under the Constitution. . . :"

The suit does not allege that Petitioner *himself* has been denied any constitutional right. This is a suit by an individual taxpayer. It is not a class suit. It is not brought on behalf of his child who is in elementary school. He does not, and could not, allege that he (or even his child) has been refused admission to any school because of his race since his child lives within the Drew-Kemper district and no application for transfer has ever been made. No discrimination against him (or even his child) is claimed by reason of the district lines of Drew-Kemper. The relief sought (solely a declaration that the bonds are invalid) is entirely unrelated and foreign to the constitutional rights of the Petitioner.

Only those who have been injured as a result of a denial of constitutional rights can invoke the jurisdiction of the Supreme Court on constitutional questions. *Tileston* v. *Ullman*, 318 U.S. 44, 63 S. Ct. 493 (1943). See *Voeller* v. *Neilston Warehouse Co.*, 61 S. Ct. 376, at 378; 311 U.S. 531, 85 L. Ed. 322 (1941). The exception to this rule allowing one in a representative capacity to assert such rights for a third party

** The petition has incorrectly stated the language of the trial court on page 10. The Court did *not* say the "Board had no duty to bring about elimination of racial segregation" as there stated, but the language of the Court was to the effect it did not think "there was any duty to promote integration" (Petition, 30a).

where the third party cannot effectively vindicate his constitutional rights except through such representative, (*N.A.A.C.P.* v. *Alabama,* 78 S. Ct. 1163, 357 U.S. 449, 2 L. Ed. (2) 1488 (1958)) does not apply here. Here the Petitioner is not purporting to act in a representative capacity; nor is there any showing or even allegation that the rights of negroes generally in the Arlington schools can be vindicated only through the Petitioner. On the contrary, his individual contentions seemed opposed to the wishes of a majority of the parents in the Drew-Kemper district, whose Parent Teachers Association voted 89 to 18 in favor of the proposal subsequently adopted by the School Board. (91, 92)

II

There Is No Substantial Federal Question Involved

Petitioner asserts (Petition, 9) as one of the reasons relied on for the allowance of the writ, that "whether public school construction may be arbitrarily sited where its use by any of the white children in the use of the school system would be unlikely, is a Federal question of substance." This assertion has no validity because the record in the case clearly shows that the public school construction in this case was not arbitrarily sited but the decision as to the site on which the improvement should be made, was arrived at only after lengthy consideration of the educational, economic and other factors concerned in the placement of the improvement. The Trial Court said, "I don't think there has been any evidence produced to the Court that they had any other choice." (Petition 30a) The Petitioner did not attack the boundaries of the Drew-Kemper school district, but his sole argument was directed to whether or not the needed improvement

should be made as an alteration to the existing building or whether or not the improvement should be located at or near the periphery of the Drew-Kemper area. A reading of the testimony in this case and particularly of the School Board members who testified, clearly shows that the determination of the School Board was arrived at only after exhaustive studies of the possibilities available to them, and in any event, the determination was one within the discretion of the School Board and cannot be said in any sense of the word to be arbitrary or based upon racial grounds. (144, 145).

Petitioner, in the Trial Court, and also in his Brief, contends that the "unexpressed purpose" of the School Board in seeking to have the additional construction to an existing school is to continue to discriminate against negro children. This is equally without merit. In the first place, not only was the assertion not proven by the Petitioner in the Trial Court, but Petitioner overlooks the fact that the bond issue was approved by the general electorate of the County and that the express purpose stated by the Respondents in asking the public to approve the bond issue was to make the proposed addition exactly in the manner to which the Petitioner objects, and it was the general electorate of the County who expressed their purpose in approving the bond issue, and this purpose is the controlling one.

Petitioner in this case did not attack the geographical boundaries of the particular school district, but throughout his brief, Petitioner seeks to create an aura that the Arlington County schools are being administered on a racially discriminatory basis and that the particular school construction to be financed by the bond issue attacked here would somehow further continued discrimination against negro school children. In

Thompson v. *Arlington County School Board*, 204 Fed. Supp. 620, Judge Lewis of the U. S. District Court for the Eastern District of Virginia, on March 1, 1962, found that the Arlington County public schools are being administered on a racially non-discriminatory basis and that all pupils residing in Arlington County are assigned to the respective school districts in which they reside, regardless of race or color. In that same case, the Court also found that the Arlington County School Board rule that "no child shall be compelled to attend a school in which his race is in the minority" was not invalid.

It should be remembered that, regardless of the adequacy of the allegations, there was no proof to support them and the Court so stated in dismissing the motion for judgment. (Petition, 30a). The effort here, to have the Supreme Court of the United States prevent a local School Board from exercising its judgment on a strictly local question, i.e. what is the best solution to the need for additional classrooms in a particular area of the County, seems to seek a rather drastic Federal intrusion into local government operations. If the local government cannot issue bonds to build classrooms where needed in a predominantly colored district, then certainly the Federal prohibition would apply if the district were predominantly white. This, for Arlington and for perhaps most school divisions, would bring school construction to a halt.

Finally, the pendency of this suit by the individual Petitioner has effectively prevented the sale of the bonds on the open market, and is preventing construction of much needed and much desired classrooms for the children in the Drew-Kemper area.

respectfully submitted that the Petition should
ed.

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